

## II. Rejection Under 35 U.S.C. § 102(e)

Claims 1-13, 15-27, and 29-36 have been rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,435,193 B1 to Cannell et al. ("Cannell") for the reasons set forth at pages 2-3 of the present Office Action. Applicants traverse this rejection.

35 U.S.C. § 102(e) prohibits a person from obtaining a patent where "...a patent [was] granted on an application for patent **by another** filed in the United States before the invention by the applicant for patent...." See 35 U.S.C. § 102(e) (emphasis added). "Another" means **other than applicants**." See M.P.E.P. § 2136.04 citing In re Land, 368 F.2d 866, 151 U.S.P.Q. 621 (CCPA 1966) (emphasis added).

In the present case, *Cannell* was not "granted on an application for patent by another" as required by 35 U.S.C. § 102(e). Rather, both *Cannell* and the present application have **identical inventors** - namely, David W. Cannell and Nghi Van Nguyen. Accordingly, 35 U.S.C. § 102(e) is inapplicable to the present facts, and the rejection under 35 U.S.C. § 102(e) is legally in error.

For at least the foregoing reason, Applicants respectfully request withdrawal of this rejection.

## III. Rejection Under 35 U.S.C. § 103(a)

Claims 14 and 28 have been rejected under 35 U.S.C. § 103(a) as unpatentable over *Cannell* in view of U.S. Patent No. 6,287,582 B1 to Gott et al. ("Gott") for the reasons set forth at page 4 of the present Office Action. Applicants traverse this rejection.

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As discussed above, *Cannell* is not prior art under 35 U.S.C. § 102(e). *Cannell* also does not qualify as prior art under any other section of 35 U.S.C. § 102. For example, *Cannell* does not qualify as prior art under 35 U.S.C. § 102(b) as *Cannell* was patented on August 20, 2002, which is not "more than one year prior to the date of application for patent in the United States" of the present application (which was filed on August 20, 2001). Accordingly, *Cannell* cannot serve as the primary reference in a rejection under 35 U.S.C. § 103. See e.g., M.P.E.P. § 2141.01. Moreover, *Gott*, relied upon by the Examiner for the alleged teaching of mucic acid, fails to teach or suggest the presently claimed subject matter.

For at least the foregoing reason, Applicants respectfully request withdrawal of this rejection.

#### IV. Conclusion

In view of the foregoing remarks, Applicants respectfully request the reconsideration of the pending claims, reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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